the provisions of the Rules relating to statements from accused persons laid down in Schedule E of the Criminal Procedure Code.

The caution administered to the accused was the one laid down in rule 6. This caution is administered to an accused person when he is formally charged by the police. In this case no formal charge was framed or read out to the accused and the caution in rule 6 was therefore inapplicable.

The inspector who recorded the statement made a mistake in interpreting the caution to the accused in the Malay language by telling him that whatever he said would be taken down and used in evidence. Rule 6 expressly provides that care should be taken to avoid any suggestion to the accused that his answers can only be used against him. The proper words that should be used are that whatever the accused says will be taken down in writing and may be given in evidence.

After recording the statement which the accused is alleged to have volunteered, the Inspector put three questions to the accused. Rule 8 provides that an accused person making a voluntary statement must not be cross-examined and no questions should be put to him except for the purpose of removing ambiguity in what he has actually said. The three questions put by the Inspector to the accused in this case were not put for the purpose of removing ambiguity.

When a police officer desires to record a cautioned statement from a person accused of an offence and who does not understand the English language, the statement should be recorded through a competent interpreter. The whole proceedings should be interpreted to the accused in his own language or in a language which he understands through an interpreter competent to interpret in that language. There are already many judicial prouncements on this question of interpretation to an accused person who does not understand English. The court must be satisfied that the officer recording the statement and the accused fully understood each other. In this case I am not so satisfied.

It must be borne in mind that a person in custody cannot be questioned without being first cautioned that he is not obliged to say anything, and it is essential that this caution should be correctly explained to him in his own language or in a language which he understands. The abovementioned Rules are part of our law and must be strictly complied with by any police officer who wishes to question an accused person in custody. Failure to comply with any of the Rules vitiates the statement recorded and makes it inadmissible in evidence. For these reasons I hold that the cautioned statement of the accused is not admissible in evidence.

I must make it clear that I express no opinion on the accused's allegation that he was assaulted by Inspector Moorthi because Inspector Moorthi is not a witness in this case and has not been given an opportunity to deny this allegation. Furthermore, it is unnecessary for me to express any opinion on this allegation because there are ample reasons for holding that the cautioned statement is not admissible in evidence in this case. I would only observe that where an accused person alleges that he was assaulted by a police officer and that in consequence thereof he made an incriminating statement, it is desirable in those circumstances for the prosecution to call the officer in question as a witness so that the officer can give his version of the incident. This is desirable not only for the purpose of assisting the court to ascertain the truth of the allegation made by the accused, but also for the purpose of giving the officer concerned an opportunity to rebut the allegation of the accused. Furthermore, the burden of proving that the accused's statement was made voluntarily is on the prosecution. And when the accused alleges that he has been the victim of an assault at the hands of the police, I fail to see how the prosecution can discharge their burden without calling evidence to rebut that allegation. In this case, for example, no evidence has been led by the prosecution on the issue of assault and the accused's allegation that he was assaulted, remains unanswered.

The cautioned statement having been held to be inadmissible, the only other evidence against the accused is that he led the police party to his house and in the compound of his house he dug up a parcel of explosives which were buried about 70 feet away from his house. The accused is stated to have taken the police to his house as a result of questioning by A.S.P. Omar Rejab. The accused was arrested on November 22, 1965, at 1.30 p.m. under the Internal Security Act and was taken to the Special Branch. Soon after that he was questioned at the Special Branch by A.S.P. Omar Rejab who says that before questioning the accused he cautioned him in the Malay language in the following terms:—

> "You are not compelled or forced to say anything, but whatever you say ought to be used in the statement."

In the course of the questioning the accused is alleged to have said, "I buried the explosives in the compound near my house," and it was as a result of this information that the accused was taken to his house. In my view A.S.P. Omar Rejab failed to comply with the provisions of rule 5. The accused, being in custody, A.S.P. Omar Rejab had no right to question him without the proper caution being first administered to the accused. As the accused does not speak English the caution had to be administered in a language which the accused understood. In administering the caution to the accused in the Malay language, A.S.P. Omar Rejab clearly departed from the words of the caution laid down in rule 5. This again emphasises how important it is that the caution should be correctly stated to the accused in a language which he understands. It seems to me that section 27 of the Evidence Ordinance must be read subject to section 121(5) of the Criminal Procedure Code. The proviso to section 121(5) of the Criminal Procedure Code provides that a statement by a person charged with an offence made by him after his arrest is not admissible unless the court is satisfied that he was duly cautioned in accordance with the abovementioned Rules. When the prosecution desire to invoke section 27 of the Evidence Ordinance they must satisfy the court that the information received from the accused which is tendered under section 27 of the Evidence Ordinance was received after the caution had been duly administered. In my view, as the accused had not been properly cautioned, his statement that he had buried the explosives in the compound of his house, is inadmissible. But evidence of the fact that he took the police to his house and there dug up the explosives is admissible. This fact by itself, however, is insufficient to warrant the inference that the explosives were in the control of the accused. Accordingly, there is no evidence that the explosives found in the compound of his house were under his control. He has no case to answer and is therefore acquitted and discharged.

Accused acquitted.

NATIONAL UNION OF HOTEL, BAR AND RESTAURANT WORKERS v. MINISTER OF LABOUR AND MANPOWER

[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat F.J. & Abdoolcader J.) April 16 & May 22, 1980]

[Penang — Federal Court Civil Appeal No. 14 of 1980]

Administrative Law — Certiorari to quash decision of Minister — Refusal to refer dispute to Industrial Court — Discretion of Minister — Discretion exercised in accordance with intention of Act — Court should not interfere — Industrial Relations Act, 1967, ss. 18(1), 20 & 26(2).

Industrial Law — Dismissal — Application to refer matter to Industrial Court — Minister exercising his discretion not to refer matter to Industrial Court — Discretion properly exercised — Industrial Relations Act, 1967, ss. 18(1), 20 & 26(2).

In this case the facts were that five hotel workers, who were union members and one other worker (a non-union member) were found gambling in the hotel premises. An inquiry was held and they were all dismissed. The non-union member made representations to the Director-General for Industrial Relations. He denied that he was gambling. The Minister thereupon referred his case to the Industrial Court as an industrial dispute. The appellants on behalf of the five union workers then reported the trade dispute arising from their dismissal to the Minister and requested that it be referred to the Industrial Court. Inquiries were made which

revealed that the representatives of the appellants admitted that the five union workers were gambling in the hotel premises. The Minister refused to refer the case to the Industrial Court and the appellants applied for an order of *certiorari* to quash the decision of the Minister. This application was refused in the High Court and the appellants appealed.

Held: in this case the Minister had exercised his discretion in a manner which was in accord with the intention of the Act and the court should not interfere.

Cases referred to:-

(1) *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223.

(2) *Padfield* v. *Minister of Agriculture, Fisheries and Food* [1968] A.C. 997.

(3) *Duport Steels Ltd.* v. *Sirs* [1980] 1 W.L.R. 142.

(4) *Secretary of State for Education and Science* v. *Tameside Metropolitan Borough Council* [1976] 3 All E.R. 665, 682.

FEDERAL COURT.

T. Thomas for the appellants.

Susila S. Param (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah C.J. (Malaya) (delivering the judgment of the Court): This is an appeal by the National Union of Hotel, Bar and Restaurant Workers ("the appellants") against the decision of Gunn Chit Tuan J. made on January 2, 1980, refusing to grant an order of *certiorari* to quash the decision of the Minister of Labour and Manpower ("the Minister") to refuse to refer to the Industrial Court a trade dispute involving the dismissal of 5 hotel workers of the Casuarina Beach Hotel Penang, who are members of the appellants under section 26 subsection (2) of the Industrial Relations Act, 1967. The subsection is in these terms:

"(2) The Minister may of his own motion refer any trade dispute to the court if he is satisfied that it is expedient so to do."

On May 22, 1978, at about 10.00 p.m. the five hotel workers together with one Raman Che Mat (a non-union member) were found gambling while on duty in the hotel premises. A domestic inquiry was held on May 29, 1978 before they were all dismissed for gambling while on duty and neglect of duty.

Raman Che Mat being a non-union member made representations to the Director-General for Industrial Relations under section 20(1) of the Act. Three meetings were held under section 20(2). Raman Che Mat denied gambling in the hotel premises. The Minister referred his case to the Industrial Court as an industrial dispute.

The appellants on behalf of the 5 union workers reported the trade dispute to the Minister pursuant to section 18(1) of the Act, and requested that it be referred to the Industrial Court. The Director-General was directed to take the necessary steps to resolve the dispute. He in turn directed the Director of Industrial Relations, Penang, Kedah and Perlis to do so. The latter held two conciliation meetings but to no avail. During those two meetings the representatives of the appellants admitted that the five union workers were gambling while on duty in the hotel premises, thus contravening rule 13(3) of the said Hotel Rules. The Director put up a report annexing the record of the two meetings for consideration by the Director-General who in turn put up his report to the Minister on November 30, 1978. The Minister gave due consideration to the report and the facts and circumstances relating to the dismissal of the five union workers without taking into account their status as union members. He was of the opinion that the explanations and statements made by Raman Che Mat particularly his denial that he participated in the gambling at the conciliation proceedings were different from those of the five union members. Clearly he considered the admission of gambling made by them fully justified their dismissal. Consequently he refused to refer their case to the Industrial Court stating that the complaint was vexatious and without merit.

The appellants now contend as they did before the learned judge that the Minister failed to take into consideration the case of Raman Che Mat which was referred to the Industrial Court and which, they said, arose from similar facts and circumstances as those which were the subject-matter of the trade dispute. In so failing, the Minister had exercised his discretion wrongfully and in a manner which was not in accord with the policy and object of the Industrial Relations Act, 1967. It was said that it is plainly the intention of the Act to refer such a trade dispute as the present to the Industrial Court.

The present case no doubt centered on the interpretation of section 26(2) of the Industrial Relations Act, 1967, which provides that, where the Minister is "satisfied" that it is expedient so to do, he may of his own motion refer any trade dispute to the Industrial Court. This subjective formulation is sufficient in our opinion to show that the Minister has a discretion to determine the desirability or otherwise of a particular course of action within the scope of the discretionary power. It is the exercise by him of the discretion vested in him, not in the courts, that we are here required to review, and when his action is challenged in the courts for alleged abuse of discretion, we are obliged to resist any temptation to convert our jurisdiction to review into a reconsideration of the merits as if on appeal. The underlying principles of judicial review have been stated in numerous cases, notably in *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation*[1] (which concerned the powers of a local authority) and *Padfield* v. *Minister of Agriculture, Fisheries and Food*[2] (which concerned the powers of a Minister). Perhaps it would not be out of place to refer to a passage from the speech of Lord Diplock in the recent House of Lords case of *Duport Steels Ltd.* v. *Sirs*,[3] which provides a timely reminder that it is the exercise by those in whom discretionary power is vested, not in the courts, that we are required to review.

"A feature of the judgments (referring to the Court of Appeal) which appears to me to be less legitimate is the absence of any recognition that the task upon which the Court of Appeal was engaged was not one of exercising an original discretion of its own . . . but of reviewing the exercise by a High Court judge of an original discretion which was his alone which he has exercised in favour of withholding an injunction." (pages 160, 161).

The criteria adopted by the courts in the process of judicial review of administrative actions are ex-

pressed in general terms, and there is no agreed terminology. As was said by Lord Wilberforce in *Secretary of State for Education and Science* v. *Tameside Metropolitan Borough Council*: [4]

"There is no universal rule as to the principles on which the exercise of a discretion may be reviewed; each statute or type of statute must be individually looked at."

Thus we must construe the Industrial Relations Act, 1967, to determine its policy and object. It cannot be gainsaid that the intention of the Act is to regulate the relations between management and labour and to prevent and settle trade disputes arising therefrom. Briefly, it provides machinery for investigating, determining and settling such disputes by arbitration, conciliation and reference to the Industrial Court, and in implementing it, policy decisions come into play. The courts call this 'discretion', meaning that the decision is one for the Minister to make, and not for the courts. It is a matter of discretion depending upon the satisfaction of the Minister with respect to the expediency of making such a reference. But if the Minister, by reason of his having misconstrued the Act or for some other reason, so exercises his discretion in a way as to defeat the policy and object of the Act, then he has clearly exercised it wrongly. In that case the courts will interfere with the exercise of his discretion by saying that he has given no weight, or has given insufficient weight, to the considerations that ought to have weighed with him, or if he has been influenced by considerations which ought not to have weighed with him.

The Minister has given his reason for refusing to refer the trade dispute to the Industrial Court and that enables us to know the considerations which had weighed with him. We have already set out the facts and circumstances which formed the basis of his decision. He stated in his affidavit that the facts and circumstances relating to the dismissal of the five union workers were different from those relating to the dismissal of Raman Che Mat. In the case of the former, they admitted gambling in the hotel premises; in the case of the latter, he denied it. In the circumstances he said the complaint of the union workers was vexatious and without merit. We can therefore see a reason to the effect that on receipt of the complaint, the Minister had satisfied himself from information in his possession as to the merits of the complaint, and he then decided that it was not expedient to refer it to the Industrial Court and it would in our opinion be a waste of time and money and contrary to the policy and object of the Act to do so. Looking at the factual basis upon which he invoked his discretionary power, we are satisfied that he had exercised it in a manner which is in accord with the intention of the Act. He is an elected Minister and is entitled to have his opinion of Industrial problems within the area of his responsibility respected. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient. "The very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred." These words taken from the speech of Lord Diplock in the *Tameside* case, (*supra*, p. 695) reflect the truism that those in whom discretionary power is vested have, to a greater or lesser extent, a range of options at their disposal. As we have said earlier in this judgment, we must guard against any tendency to equate the distinct process of mere review with an unarticulated opinion that having investigated the facts we are in a better position to adjudicate upon the merits. That is not our function. It is not for us to say what shall or shall not be done in this special area of delegated jurisdiction. Our duty is only to see that the matter in hand has been determined by the Minister in accordance with the policy and object of the Act. That in our opinion he has done.

We dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Skrine & Co.*

KEITH SELLAR v. LEE KWANG
TENNAKOON v. LEE KWANG

[F.C. (Suffian L.P., Raja Azlan Shah C.J. (Malaya), Wan Suleiman F.J., Abdul Hamid Omar F.J. & Hashim Yeop A. Sani J.) April 21 & May 24, 1980]

[Kuala Lumpur — Federal Court Civil Appeal Nos. 219 & 232 of 1979]

Legal Profession — Disciplinary proceedings — Whether rightly taken under new law — Receipt of money by Chief Clerk in name of firm — Failure to return or account for money — Misconduct — Standard of proof — Legal Profession Act, 1966, s. 150(1).

Statute — Whether statute has retrospective effect — Effect of repeal — Interpretation Act, 1967, s. 30 — Legal Profession Act, 1966, s. 150(1).

In this case a complaint was made on or about the 19th August 1975 that the respondent had paid money to the Chief Clerk of the appellants' firm, which was not returned or accounted for. The Legal Profession Act 1966 which repealed the Advocates and Solicitors Ordinance, 1947, came into force on 1st June 1977. The Disciplinary Committee appointed by the Bar Council decided that although it was appointed before the commencement of the Legal Profession Act, 1976, it was deemed to be appointed under that Act and that proceedings should proceed as though they were commenced under the Act. The Disciplinary Committee found that the appellants were guilty of misconduct in their practice as advocates and solicitors. The appellants appealed.

Held: (1) the express provisions of section 150 of the Legal Profession Act, 1976 override section 30 of the Interpretation Act, 1967 and the Disciplinary Committee was therefore correct in proceeding under the 1976 Act;

(2) in the circumstances of this case the Disciplinary Committee adopted the right approach and there were no grounds to assume that the Committee had applied a lower standard of proof than that required for a proceeding of this nature.

Cases referred to:-

(1) *Hamilton Gell* v. *White* [1922] 2 K.B. 422, 431.

(2) *Director of Public Works* v. *Ho Po Sang* [1961] A.C. 901; [1961] 2 All E.R. 721.

(3) *Free Lanka Insurance Co. Ltd.* v. *Ranasinghe* [1964] 1 All E.R. 457.

(4) *Kenderaan Bas MARA* v. *Yew Bon Tew & Anor.* [1980] 1 M.L.J. 311.

(5) *Carson* v. *Carson* [1964] 1 W.L.R. 511, 516.

(6) *Re Athlumney* [1898] 2 Q.B. 547.

(7) *Hutchinson* v. *Jauncey* [1950] 1 K.B. 574.